

1 HOUSE BILL NO. 101

2 INTRODUCED BY R. BROWN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING PUBLIC
6 ASSISTANCE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
7 SERVICES TO ADMINISTER PUBLIC ASSISTANCE; REPLACING COUNTY WELFARE OFFICES WITH LOCAL
8 OFFICES OF PUBLIC ASSISTANCE; PROVIDING FOR THE STAFFING AND SUPERVISION OF LOCAL
9 OFFICES; ELIMINATING THE LAWS GOVERNING STATE ASSUMPTION OF COUNTY PUBLIC ASSISTANCE
10 PROGRAMS; AMENDING SECTIONS 15-1-112, 15-10-420, 41-3-1122, 52-1-103, 52-1-110, 53-2-201,
11 53-2-203, 53-2-301, 53-2-304, 53-2-305, 53-2-602, 53-2-603, 53-2-606, 53-2-609, 53-2-610,
12 53-2-612, 53-2-613, 53-3-111, 53-4-213, 53-4-214, 53-4-233, 53-4-244, 53-6-112, 53-6-114,
13 53-6-121, 53-6-132, 53-6-133, 53-6-155, 53-6-157, AND 53-21-113, MCA; REPEALING SECTIONS
14 53-2-302, 53-2-303, 53-2-306, 53-2-801, 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813,
15 53-4-221, AND 53-4-222, MCA; AND PROVIDING AN EFFECTIVE DATE."

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18

19 **Section 1.** Section 15-1-112, MCA, is amended to read:

20 **"15-1-112. Business equipment tax rate reduction reimbursement to local government taxing**
21 **jurisdictions.** (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by
22 June 1 of 1996, 1997, and 1998 for all other reimbursements in this section, the department of revenue
23 shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide
24 that information to each county treasurer. The reimbursement amount must be determined for each local
25 government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in
26 the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138
27 that has a reduced tax rate under 15-24-1402.

28 (2) (a) The reimbursement amount to be used as the basis for the payment reduction under
29 subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in
30 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction

1 and then multiplying by 1/9th.

2 (b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996
3 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property
4 described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year
5 1995 market value for property described in 15-6-138 in the same jurisdiction.

6 (ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular
7 jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated
8 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by
9 multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax
10 year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual
11 tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy
12 for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement
13 amount is zero.

14 (c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997
15 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value
16 of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the
17 tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

18 (ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular
19 jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated
20 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by
21 multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax
22 year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual
23 tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy
24 for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement
25 amount is zero.

26 (d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998
27 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market
28 value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more
29 than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

30 (ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular

1 jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated
2 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by
3 multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax
4 year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual
5 tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy
6 for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement
7 amount is zero.

8 (3) (a) For purposes of this section, "local government taxing jurisdiction" means a local
9 government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138,
10 including county governments, incorporated city and town governments, consolidated county and city
11 governments, tax increment financing districts, local elementary and high school districts, local community
12 college districts, miscellaneous districts, and special districts. The term includes countywide mills levied
13 for equalization of school retirement or transportation.

14 (b) The term does not include county or state school equalization levies provided for in 20-9-331,
15 20-9-333, and 20-9-360. ~~It also does not include any state levy for welfare programs provided for in~~
16 ~~53-2-813.~~

17 (c) Each tax increment financing district must receive the benefit of the state mill on the
18 incremental taxable value of the district.

19 (4) County treasurers shall reduce the county payment to the state for the levy imposed under
20 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under
21 subsection (2)(a) for all of the local government taxing jurisdictions in the county.

22 (5) County treasurers shall reduce the county payment to the state for the levy imposed under
23 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year
24 1996 for all of the local government taxing jurisdictions in the county, as determined by the department
25 under subsection (2).

26 (6) County treasurers shall reduce the county payment to the state for the levy imposed under
27 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996
28 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the
29 reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county,
30 as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year 1998, according to the following schedule:

Tax Year	Percentage of 1998 Reimbursement Amount
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1	1999	90
2	2000	80
3	2001	70
4	2002	60
5	2003	50
6	2004	40
7	2005	30
8	2006	20
9	2007	10
10	2008 and following years	0

11 (b) The reimbursement amount for each tax year must be the basis for reducing the amount
 12 remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the
 13 following year.

14 (14) The county treasurer shall use the funds from the reduced payment to the state for the levy
 15 imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined
 16 by the department under subsection (2). The reimbursement must be distributed to funds within local
 17 government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are
 18 distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the
 19 reimbursement in December must be based on the current year's mill levy.

20 (15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount
 21 of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by
 22 the amount that would otherwise have to be raised by the mill levy.

23 (16) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no
 24 longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction
 25 that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes.
 26 If a local government taxing jurisdiction that existed prior to January of 1996 is split between two or more
 27 taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall
 28 determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions."

29

30 **Section 2.** Section 15-10-420, MCA, is amended to read:

1 **"15-10-420. Procedure for calculating levy.** (1) A governmental entity that is authorized to impose
2 mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the
3 prior year, even if that levy is greater than the levy established by law. The maximum number of mills that
4 a governmental entity may impose is established by calculating the number of mills required to generate
5 the amount of property tax actually assessed in the governmental unit in the prior year based on the
6 current year taxable value, less the value of newly taxable property.

7 (2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any
8 additional levies authorized by the voters to all property in the governmental unit, including newly taxable
9 property.

10 (3) For purposes of this section, newly taxable property includes:

11 (a) annexation of real property and improvements into a taxing unit;

12 (b) construction, expansion, or remodeling of improvements;

13 (c) transfer of property into a taxing unit;

14 (d) subdivision of real property;

15 (e) reclassification of property;

16 (f) transfer of property from tax-exempt to taxable status; and

17 (g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

18 (4) Subsection (1) does not apply to school district general fund levies and the school district levy
19 for tuition obligations established in 20-5-324(5).

20 (5) For purposes of subsection (1), taxes imposed:

21 (a) include registration fees imposed on light vehicles under 61-3-561 and distributed under
22 61-3-509(2); and

23 (b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

24 (6) In determining the maximum number of mills in subsection (1), the governmental entity shall
25 take into account any change from the prior year in the amount of statutory reimbursements for changes
26 in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read
27 on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to
28 account for a decrease in reimbursements and shall decrease the number of mills to fully account for any
29 increase in reimbursements.

30 (7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107,

1 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439, ~~and 53-2-813~~. However, the number of mills
2 calculated by the department may not exceed the mill levy limits established in those sections.

3 (8) The department may adopt rules to implement this section. The rules may include a method
4 for calculating the percentage of change in valuation for purposes of determining the elimination of
5 property, new improvements, or newly taxable property in a governmental unit."

6

7 **Section 3.** Section 41-3-1122, MCA, is amended to read:

8 **"41-3-1122. Payment for support of youth in need of care, youth in need of intervention, or**
9 **delinquent youth -- reimbursement by county.** (1) Whenever a youth who is a youth in need of care, a
10 youth in need of intervention, or a delinquent youth is placed by the department of public health and
11 human services or the department of corrections in a youth care facility, the department making the
12 placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the
13 youth care facility at a rate established by the department of public health and human services for the
14 youth's board, clothing, personal needs, treatment, and room.

15 (2) On or before the 20th of each month, the department of public health and human services or
16 the department of corrections shall present a claim to the county of residence of the youth for no more
17 than one-half of the nonfederal share of the payments made during the month. The county shall make
18 reimbursement to the department within 20 days after the claim is presented.

19 (3) Except as provided in subsection (4), when a county's level of expenditure for any year
20 reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation
21 for foster care expenditures.

22 (4) If a county's level of expenditure for foster care in fiscal year 1987 was \$10,000 or less, the
23 county's level of expenditure for purposes of determining the county's reimbursement specified in
24 subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal
25 years 1984 through 1987, whichever is less.

26 ~~(5) A county that was state-assumed prior to 1987 but that at a later date reassumes~~
27 ~~responsibility pursuant to 53-2-811 is responsible for reimbursement of foster care expenditures up to the~~
28 ~~county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.~~

29 ~~(6)~~(5) The department shall conduct or arrange for the review required under 41-3-1115, or when
30 applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

1

2 **Section 4.** Section 52-1-103, MCA, is amended to read:3 **"52-1-103. Powers and duties of department.** The department shall:

4 (1) administer and supervise all forms of child and adult protective services;

5 (2) act as the lead agency in coordinating and planning services to children with multiagency
6 service needs;7 (3) establish a system of councils at the state and local levels to make recommendations and to
8 advise the department on issues, including children's issues;

9 (4) provide the following functions, as necessary, for youth in need of care:

10 (a) intake, investigation, case management, and client supervision;

11 (b) placement in youth care facilities;

12 (c) contracting for necessary services;

13 (d) protective services day care; and

14 (e) adoption;

15 (5) register or license youth care facilities, child-placing agencies, day-care facilities, community
16 homes for persons with developmental disabilities, community homes for severely disabled persons, and
17 adult foster care facilities;18 (6) act as lead agency in implementing and coordinating child-care programs and services under
19 the Montana Child Care Act;

20 (7) administer the interstate compact for children;

21 (8) (a) administer child abuse prevention services funded through child abuse grants and the
22 Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

23 (b) administer elder abuse prevention services;

24 (9) develop a statewide youth services and resources plan that takes into consideration local
25 needs;

26 (10) administer services to the aged;

27 (11) provide consultant services to:

28 (a) facilities providing care for adults who are needy, indigent, or dependent or who have
29 disabilities; and

30 (b) youth care facilities;

(12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(13) contract, as necessary, ~~with the county board of welfare~~ for administration of child and adult protection services for ~~that~~ each county; and

(14) adopt rules necessary to carry out the purposes of 41-3-1126 and this chapter."

Section 5. Section 52-1-110, MCA, is amended to read:

"52-1-110. County contribution for salaries and travel of protective services employees. (1) The salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the department of public health and human services. The board of county commissioners of a each county ~~that has not become state-assumed pursuant to 53-2-811~~ shall reimburse the department of public health and human services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

~~(2) A county that was state-assumed prior to 1987 but at a later date reassumes responsibility pursuant to 53-2-811 is responsible for reimbursement of salaries, travel expenses, and indirect costs up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.~~

~~(3)~~(2) On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and indirect costs, the department of public health and human services shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make the reimbursement within 20 days after the presentation of the claim.

~~(4)~~(3) The department is responsible for administrative costs associated with the department's provision of protective services, including costs for rent, telephones, postage, and equipment."

Section 6. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, FAIM financial assistance, as defined in 53-2-902, energy assistance, weatherization,

1 vocational rehabilitation, services for persons with severe disabilities, developmental disability services,
2 medical care payments in behalf of recipients of public assistance, employment and training services for
3 recipients of public assistance, and other programs as necessary to strengthen and preserve families;

4 (b) give consultant service to private institutions providing care for adults who are needy, indigent,
5 or dependent or who have disabilities;

6 (c) cooperate with other state agencies and develop provisions for services to the blind, including
7 the prevention of blindness, the location of blind persons, medical services for eye conditions, and
8 vocational guidance and training of the blind;

9 (d) ~~provide services in respect to organization~~ organize and supervise ~~county departments~~ the local
10 offices of public welfare and county boards of public welfare assistance in the administration of public
11 ~~assistance functions and for efficiency and economy~~ an efficient and economical manner;

12 (e) assist and cooperate with other state and federal departments, bureaus, agencies, and
13 institutions, when requested, by performing services in conformity with public assistance purposes;

14 (f) administer all state and federal funds allocated to the department for public assistance and do
15 all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance
16 purposes;

17 (g) make rules governing payment for services and supplies provided to recipients of public
18 assistance; and

19 (h) adopt rules regarding assignment of monetary and medical support upon application for FAIM
20 financial assistance, as defined in 53-2-902, and related medical assistance.

21 (2) The department may:

22 (a) purchase, exchange, condemn, or receive by gift either real or personal property that is
23 necessary to carry out its public assistance functions. Title to property obtained under this subsection must
24 be taken in the name of the state of Montana for the use and benefit of the department.

25 (b) contract with the federal government to carry out its public assistance functions. The
26 department may do all things necessary in order to avail itself of federal aid and assistance.

27 (c) make rules, consistent with state and federal law, establishing the amount, scope, and duration
28 of services to be provided to recipients of public assistance."

29
30 **Section 7.** Section 53-2-203, MCA, is amended to read:

1 **"53-2-203. Department to ~~maintain merit system and~~ supervise public assistance personnel.** The

2 department shall:

3 ~~—— (1) maintain a merit system pertaining to qualifications for appointment, terms of office, annual~~
4 ~~merit rating, releases, promotions, and salary schedules for all public assistance personnel; personnel~~
5 ~~standards must conform as far as possible with general standards established or required by the federal~~
6 ~~government;~~

7 ~~—— (2) have examinations held from time to time throughout the state to establish and furnish to~~
8 ~~county departments lists, in order of merit, of persons eligible for appointment;~~

9 ~~—— (3) develop policies relating to educational leave of employees and to staff development needs;~~

10 ~~—— (4) supervise the appointment, dismissal, and entire status of the public assistance personnel~~
11 ~~attached to county boards in accordance with the merit system~~ local offices of public assistance."

12
13 **Section 8.** Section 53-2-301, MCA, is amended to read:

14 **"53-2-301. ~~County departments~~ Local offices of public assistance to be established.** There shall
15 must be established in each county of the state; ~~except in a county that has transferred its public~~
16 ~~assistance and protective services responsibilities to the state under the provisions of part 8 of this~~
17 ~~chapter, a county department of public welfare, which shall consist of a county board of public welfare~~
18 ~~and such staff personnel as may be necessary for the efficient performance of the~~ one or more local
19 offices of public assistance ~~activities of the county~~. If conditions warrant ~~and if two or more county boards~~
20 ~~enter into an agreement~~, two or more counties may ~~combine~~ be combined into one administrative unit and
21 the department may use the same local office of public assistance and staff personnel ~~throughout the~~
22 ~~administrative unit~~ to administer public assistance in the combined counties."

23
24 **Section 9.** Section 53-2-304, MCA, is amended to read:

25 **"53-2-304. (Temporary) Staff ~~personnel of county department~~ public assistance programs.** (1)
26 (a) ~~Each county board shall select and appoint from a list of qualified persons furnished by the department~~
27 ~~staff personnel that are necessary.~~ The staff personnel in each county local office of public assistance
28 must consist of at least one qualified staff worker ~~or investigator and clerks and stenographers that may~~
29 ~~be necessary.~~ The department shall hire and supervise all public assistance staff. ~~If conditions warrant,~~
30 ~~the county board, with the approval of the department, may appoint some~~ A fully qualified person listed

1 ~~must be employed~~ by the department ~~as supervisor of its~~ pursuant to subsections (1)(b) and (1)(c) to
2 ~~supervise the~~ staff personnel. ~~The staff personnel of each county department are directly responsible to~~
3 ~~the county board, but the department of public health and human services may supervise the county~~
4 ~~employees in respect to the efficient and proper performance of their duties. The county board of public~~
5 ~~welfare may not dismiss any member of the staff personnel without the approval of the department. The~~
6 ~~department may request the county board to dismiss any member of the staff personnel for inefficiency,~~
7 ~~incompetence, or similar cause. The final authority for dismissal is the county board. In counties where~~
8 ~~the department has assumed the administration of welfare duties, the final authority for dismissal is the~~
9 ~~director of the department.~~

10 (b) In accordance with subsection (1)(a), the department shall establish a hiring committee for the
11 purpose of choosing a qualified applicant to serve as primary supervisor of the public assistance staff. The
12 hiring committee must consist of two county commissioners from the county where the vacancy exists
13 and two representatives or designees of the department. If the primary supervisor is to supervise staff in
14 more than one county, then the county commissioners from each of the counties shall designate two
15 county commissioners to represent the county as members of the hiring committee.

16 (c) The department shall screen the applicants who apply for the position of primary supervisor
17 and shall compile a list of the most qualified applicants on the basis of merit. The department shall present
18 the list to the hiring committee. The committee shall rank the applicants in the order it considers most
19 appropriate, and the department shall offer the primary supervisor position to the applicants in the order
20 determined by the hiring committee unless the department is unable to contact a particular applicant after
21 having made a good faith effort. An offer of employment may not be made to a lower-ranking applicant
22 until all available higher-ranking applicants have been offered the primary supervisor position and have
23 either refused the offer or withdrawn their applications.

24 (2) ~~The department shall pay~~ Public assistance staff must be paid from state public assistance
25 funds ~~the both their~~ salaries of public assistance staff personnel attached to a county board. The
26 ~~department shall also pay the~~ and their travel expenses of those personnel, as provided in 2-18-501
27 through 2-18-503, when those personnel are away from the county seat ~~traveling~~ in the performance of
28 their duties. However, the county board shall reimburse the department from county poor funds for those
29 the full amount of salaries; and travel expenses; and indirect costs that are not reimbursed to the
30 department by the federal government and for the full amount of the department's administrative costs

1 that are allocated by the department to the county for the administration of ~~county welfare~~ public
2 assistance programs, ~~as follows:~~

3 ~~—— (a) The county board shall reimburse the department 50% of all salaries, travel expenses, and~~
4 ~~allocated direct and indirect administrative costs attributable to cash assistance and emergency assistance~~
5 ~~programs created pursuant to Title 53, chapter 4. However, a county is not required to reimburse the~~
6 ~~department more for the salaries, travel expenses, indirect costs, and allocated administrative costs for~~
7 ~~1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and~~
8 ~~emergency assistance programs in 1996.~~

9 ~~—— (b) The county board shall reimburse the department the full amount of salaries, travel expenses,~~
10 ~~and allocated direct and indirect administrative costs attributable to any public assistance program other~~
11 ~~than the cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4, and~~
12 ~~not reimbursed to the department by the federal government. Under circumstances prescribed by the~~
13 ~~department, the reimbursement by the county may be less than the county share as prescribed in this~~
14 ~~subsection. All other administrative costs of the local office of public assistance must be paid from county~~
15 ~~poor funds.~~

16 ~~(3) All administrative costs of the county department of public welfare other than the costs~~
17 ~~described in subsections (2)(a) and (2)(b) must be paid from county poor funds.~~

18 ~~(4)(3)~~ On or before the 20th day of the month following the month for which the payments to the
19 public assistance staff ~~personnel of the county~~ were made, the department shall present to the county
20 ~~department of public welfare~~ a claim for the required reimbursements. The county ~~board~~ shall make
21 reimbursements within 20 days after the presentation of the claim, and the department ~~of public health~~
22 ~~and human services~~ shall credit all reimbursements to its account for administrative costs.

23 ~~(5) If a county has transferred its public assistance and protective services responsibilities to the~~
24 ~~state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public~~
25 ~~assistance and protective services personnel, including if necessary a supervisor of staff personnel. All~~
26 ~~personnel are directly responsible to the department. (Terminates June 30, 2001--sec. 6, Ch. 341, L.~~
27 ~~1999.)~~

28 **53-2-304. (Effective July 1, 2001) Staff ~~personnel of county department~~ public assistance**
29 **programs.** (1) (a) Each county board shall select and appoint from a list of qualified persons furnished by
30 the department of public health and human services staff personnel that are necessary. The staff personnel

1 in each ~~county~~ local office of public assistance must consist of at least one qualified staff worker ~~or~~
2 ~~investigator and clerks and stenographers that may be necessary. The department of public health and~~
3 human services shall hire and supervise all public assistance staff. ~~If conditions warrant, the county board,~~
4 ~~with the approval of the department of public health and human services, may appoint some~~ A fully
5 qualified person ~~listed~~ must be employed by the department ~~as supervisor of its pursuant to subsections~~
6 (1)(b) and (1)(c) to supervise the staff personnel. ~~The staff personnel of each county department are~~
7 ~~directly responsible to the county board, but the department of public health and human services may~~
8 ~~supervise the county employees in respect to the efficient and proper performance of their duties. The~~
9 ~~county board of public welfare may not dismiss any member of the staff personnel without the approval~~
10 ~~of the department of public health and human services. The department may request the county board to~~
11 ~~dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final~~
12 ~~authority for dismissal is the county board. In counties where the department has assumed the~~
13 ~~administration of welfare duties, the final authority for dismissal is the director of the department.~~

14 (b) In accordance with subsection (1)(a), the department shall establish a hiring committee for the
15 purpose of choosing a qualified applicant to serve as primary supervisor of the public assistance staff. The
16 hiring committee must consist of two county commissioners from the county where the vacancy exists
17 and two representatives or designees of the department. If the primary supervisor is to supervise staff in
18 more than one county, then the county commissioners from each of the counties shall designate two
19 county commissioners to represent the county as members of the hiring committee.

20 (c) The department shall screen the applicants who apply for the position of primary supervisor
21 and shall compile a list of the most qualified applicants on the basis of merit. The department shall present
22 the list to the hiring committee. The committee shall rank the applicants in the order it considers most
23 appropriate, and the department shall offer the primary supervisor position to the applicants in the order
24 determined by the hiring committee unless the department is unable to contact a particular applicant after
25 having made a good faith effort. An offer of employment may not be made to a lower-ranking applicant
26 until all available higher-ranking applicants have been offered the primary supervisor position and have
27 either refused the offer or withdrawn their applications.

28 (2) Public assistance staff ~~personnel attached to the county board~~ must be paid from state public
29 assistance funds both their salaries and their travel expenses, as provided for in 2-18-501 through
30 2-18-503, ~~when away from the county seat traveling~~ in the performance of their duties, ~~but~~. However,

1 the county ~~board of public welfare~~ shall reimburse the department of ~~public health and human services~~
2 from county poor funds for the full amount of the salaries and travel expenses that are not reimbursed to
3 the department by the federal government and for the full amount of the department's administrative costs
4 that are allocated by the department to the county for the administration of ~~county welfare~~ public
5 assistance programs and that are not reimbursed to the department by the federal government. Under
6 circumstances prescribed by the department of ~~public health and human services~~, the reimbursement by
7 the county ~~board of public welfare~~ may be less than the county share as prescribed in this subsection. All
8 other administrative costs of the ~~county department~~ local office of public assistance must be paid from
9 county poor funds.

10 (3) On or before the 20th day of the month following the month for which the payments to the
11 public assistance staff ~~personnel of the county~~ were made, the department of ~~public health and human~~
12 ~~services~~ shall present to the county ~~department of public welfare~~ a claim for the required reimbursements.
13 The county ~~board~~ shall make reimbursements within 20 days after the presentation of the claim, and the
14 department of ~~public health and human services~~ shall credit all reimbursements to its account for
15 administrative costs.

16 ~~(4) If a county has transferred its public assistance and protective services responsibilities to the~~
17 ~~state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public~~
18 ~~assistance and protective services personnel, including if necessary a supervisor of staff personnel. All~~
19 ~~personnel are directly responsible to the department."~~

20

21 **Section 10.** Section 53-2-305, MCA, is amended to read:

22 **"53-2-305. County departments Local offices of public assistance under supervision of**
23 **department. (1) ~~County departments~~ Local offices of public assistance are under the supervision of the**
24 **department of ~~public health and human services~~ and are subject to audit by the department. However, the**
25 **department shall enter into agreements with the counties regarding minimum standards of operation,**
26 **including but not limited to office hours, staffing, significant program changes, administration of county**
27 **public assistance programs, and office facilities. If the board of county commissioners in a county**
28 **disagrees with a specific method used, approach taken, or decision made that has a broad impact on the**
29 **provision of public assistance in the county, the board of county commissioners may present their**
30 **objections to the department in accordance with subsection (2).**

(2) All objections made by the board of county commissioners pursuant to subsection (1) must be presented to the department in writing. Within 45 days of receiving a written objection, the department shall convene a resolution committee. The committee must be composed of two county commissioners to be appointed for 2-year terms by the governor and two representatives or designees of the department. The Montana association of counties may make recommendations to the governor for the appointment of county commissioners. The resolution committee shall review the objections made by the county and shall attempt, in good faith, to develop an alternative method, approach, or resolution that is satisfactory to both the department and the county. The resolution committee shall present the results of its deliberations to the director of the department, who shall make the final decision regarding any action suggested by the committee."

Section 11. Section 53-2-602, MCA, is amended to read:

"53-2-602. Grants based on need. ~~Subject to review by the county board, the staff of the county~~
The department shall determine grants and changes in grants, based on the needs of each applicant, after investigation an eligibility determination is made in accordance with the rules and standards of assistance
~~prescribed by the department of public health and human services."~~

Section 12. Section 53-2-603, MCA, is amended to read:

"53-2-603. Award of public assistance determined after investigation eligibility determination. ~~(1)~~
Upon completion of an ~~investigation application~~, ~~the county board~~ department, through the appropriate
local office of public assistance, shall determine whether the applicant is eligible for public assistance under
the provisions of this title, the type and amount of public assistance the applicant must receive, and the
date upon which the public assistance must begin. This subsection does not apply to any form of public
assistance managed by a managed care contractor, as provided in 53-6-116, when a determination of
eligibility is made by the managed care contractor.

~~(2) The department, if necessary to conform with the United States Social Security Act, may issue
rules to the county welfare departments requiring the use of the declaration method, in a form that the
department may prescribe, for the purpose of determining eligibility, regardless of any other investigative
provisions under this title, and for all types of assistance. These rules may include any additional
investigations the department may require."~~

1

2 **Section 13.** Section 53-2-606, MCA, is amended to read:

3 **"53-2-606. Right of appeal.** (1) If an application for assistance for food stamps, FAIM financial
4 assistance, as defined in 53-2-902, or medicaid is not acted upon promptly or if a decision is made ~~with~~
5 by which the applicant or recipient is ~~not satisfied~~ aggrieved, the applicant or recipient may appeal to the
6 board of public assistance for a fair hearing by addressing a request for a hearing to the department of
7 public health and human services. The board of public assistance shall, upon receipt of a request for a
8 hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

9 (2) The department may upon its own motion review any decision of a ~~county welfare board~~ local
10 office of public assistance and may consider any application upon which a decision has not been made ~~by~~
11 ~~the county board~~ within a reasonable time from the filing of the decision. The department may have an
12 additional ~~investigation~~ determination made and shall make a decision as to the granting of assistance and
13 the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with
14 the provisions of this title.

15 (3) If the department reviews a ~~county~~ decision on its own motion, applicants or recipients
16 affected by the decisions of the department shall upon request be given reasonable notice and an
17 opportunity for a fair hearing by the board of public assistance.

18 ~~(4) All decisions of the department or the board of public assistance are final and are binding and~~
19 ~~must be complied with by the county department."~~

20

21 **Section 14.** Section 53-2-609, MCA, is amended to read:

22 **"53-2-609. Revocation of assistance.** If the ~~county department or~~ department of public health and
23 ~~human services~~ or the local office of public assistance has reason to believe, by reason of a complaint or
24 otherwise, that public assistance under this title has been improperly granted, it shall ~~have~~ make an
25 investigation ~~made~~. If it appears as a result of an investigation that the assistance was improperly granted,
26 ~~the department of public health and human services shall notify the county department that further~~
27 payments may not be authorized for the recipient. The right of appeal is granted to recipients whose
28 assistance has been revoked."

29

30 **Section 15.** Section 53-2-610, MCA, is amended to read:

1 **"53-2-610. County to reimburse department.** (1) On or before the 20th of each month, the
2 department shall present a claim for reimbursement to each county ~~department~~ for its proportionate share
3 of public assistance granted in the county to recipients during the month and for vendor medical payments
4 made on behalf of recipients in the previous month. The county ~~department~~ shall make the reimbursement
5 to the department within 20 days after the claim is presented.

6 (2) The counties may not be required to reimburse the department for:

7 (a) any portion of public assistance paid to a household eligible for FAIM financial assistance, as
8 defined in 53-2-902, if the household includes an enrolled Indian who is the caretaker relative of a needy
9 dependent child; or

10 (b) any payment on behalf of any person in a state-operated medical institution.

11 (3) (a) From the original date of entrustment or the original date of state residency, whichever
12 is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or
13 hospital, foster home, or private charitable institution are the financial responsibility of the appropriate
14 county as provided in subsections (3)(b) through (3)(d).

15 (b) The county in which commitment of an adult is initiated is considered the county of financial
16 responsibility except when a court decree declares the residency to be otherwise. When an adult is
17 transferred from a facility or institution to one of the facilities listed in subsection (3)(a), the county that
18 initiated the original commitment is considered the county of financial responsibility except in the case of
19 an adult transfer from an out-of-state institution, in which case the county in which the facility is located
20 is considered the county of financial responsibility.

21 (c) In all cases in which a minor patient or ward is involved, the county of financial responsibility
22 is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state
23 agency, the agency may make a reasonable declaration of the county residency of its ward using
24 applicable guidelines enumerated in this section.

25 (d) If a person is or becomes an adult while in an institution, the person may determine the county
26 of residence when the person is restored to competency and released. The person becomes the financial
27 responsibility of the new county of residence."

28
29 **Section 16.** Section 53-2-612, MCA, is amended to read:

30 **"53-2-612. Lien of department or county upon third-party recoveries.** (1) Upon notice by the

department, a county, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.

(2) The department or county may, in the name of the recipient on whose behalf medical assistance has been paid by the department or county, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for medical assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department or county and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.

(e) Except as provided in subsections (3)(e)(i) and (3)(e)(ii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(i) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

(ii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department or county by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department or county paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department or the ~~director~~ commissioners of the county ~~department~~ that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

(i) the name and address of the recipient and the recipient's legal representative, if any;

(ii) the name and address of the third party alleged to be liable to the recipient;

(iii) the name and address of any known insurer of the third party; and

(iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department or county has paid medical assistance is liable to the department or county for the amount it is entitled to receive under this section if:

(i) the recipient or the recipient's legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or the third party's insurer; and

(ii) a third party or the third party's insurer that did not receive notice from the department or

1 county as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without
2 satisfying any lien of the department or county.

3 (5) (a) If a third party or the third party's insurer that has received notice of the department's or
4 county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim
5 without first satisfying the lien of the department or county, the third party or the third party's insurer is
6 liable to the department or county for the amount the department or county is entitled to receive under
7 this section.

8 (b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given
9 notice if:

10 (i) the department or county mails, by certified mail, to the third party or the third party's insurer:

11 (A) a statement of the medical assistance paid or that may be paid by the department or county
12 on behalf of the recipient; and

13 (B) a claim for reimbursement;

14 (ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or
15 the third party's insurer:

16 (A) a copy of the notice required by subsection (4)(a); or

17 (B) a statement stating that the recipient has applied for or has received medical assistance from
18 the department or county in connection with the same claim; or

19 (iii) the recipient or the recipient's legal representative has commenced an action against the third
20 party or the third party's insurer for damages or compensation for personal injury, disease, illness, or
21 disability for which the department or county has paid or may pay medical assistance, in whole or in part,
22 and the department or county files in the court in which the action is pending a notice of lien stating that
23 a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement
24 of the action and that:

25 (A) medical assistance in a stated amount has been paid by the department or county on behalf
26 of the recipient; or

27 (B) medical assistance may be paid on behalf of the recipient.

28 (6) As used in this section, the following definitions apply:

29 (a) "County" means a county ~~department of welfare in a county that has not transferred its public~~
30 ~~assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8~~ provided medical

1 assistance to a recipient through an indigent assistance program operated at the option of the county.

2 (b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient
3 with respect to a claim or action to recover damages or compensation from a third party or a third party's
4 insurer.

5 (c) "Recipient" means a person on whose behalf the department or a county has paid or may pay
6 medical assistance for the cost of medical treatment and medical-related services for personal injury,
7 disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

8 (d) "Third party" means an individual, institution, corporation, or public or private agency that is
9 or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal
10 injury, disease, illness, or disability of a recipient of medical assistance from the department or a county
11 and includes but is not limited to insurers, health service organizations, and parties liable or who may be
12 liable in tort."

13

14 **Section 17.** Section 53-2-613, MCA, is amended to read:

15 **"53-2-613. Application for assistance -- assignment of support rights.** (1) Applications for public
16 assistance, including but not limited to FAIM financial assistance, as defined in 53-2-902, and medical
17 assistance, must be made to the ~~county department~~ local office of public ~~welfare~~ assistance in the county
18 in which the person is residing. The application must be submitted, in the manner and form prescribed by
19 the department, and must contain information required by the department.

20 (2) A person who signs an application for FAIM financial assistance, as defined in 53-2-902, or
21 related medical assistance assigns to the state, ~~to the department,~~ and to the ~~county welfare~~ department
22 all rights that the applicant may have to monetary and medical support from any other person in the
23 applicant's own behalf or in behalf of any other family member for whom application is made. A person
24 who signs an application for public assistance other than FAIM financial assistance, as defined in
25 53-2-902, or related medical assistance may, in accordance with rules adopted by the department, be
26 required to assign to the state, to the department, and to the ~~county welfare department~~ all rights that the
27 applicant may have to monetary and medical support from any other person in the applicant's own behalf
28 or on behalf of any other family member for whom application is made.

29 (3) The assignment:

30 (a) is effective for both current and accrued support, including unpaid support that accrued before

1 the applicant received public assistance, and medical obligations;

2 (b) takes effect upon a determination that the applicant is eligible for public assistance; and

3 (c) remains in effect with respect to the amount of any unpaid support and medical obligation
4 accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

5 (4) If a person who is the legal custodian and child support obligee under a support order
6 relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal
7 custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the
8 child support obligation is transferred by operation of law to the caretaker relative and may be assigned
9 as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer
10 has physical custody of the child, except for any unpaid support still owing under the assignment at that
11 time.

12 (5) Whenever a child support or spousal support obligation is assigned to the department pursuant
13 to this section, the following provisions apply:

14 (a) If the support obligation is based upon a judgment or decree or an order of a court of
15 competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to
16 reimburse the cumulative total of public assistance money expended.

17 (b) A recipient or former recipient of public assistance may not commence or maintain an action
18 to recover or enforce a delinquent support obligation or make any agreements with any other person or
19 agency concerning the support obligation, except as provided in 40-5-202.

20 (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not
21 pay over or release for the benefit of any recipient or former recipient of public assistance any amounts
22 received pursuant to a judgment or decree or an order of the court until the department's child support
23 enforcement division has filed a written notice that:

24 (i) the assignment of current support amounts has been terminated; and

25 (ii) all assigned support delinquencies, if any, are satisfied or released.

26 (d) A recipient or former recipient of public assistance may not take action to modify or make any
27 agreement to modify, settle, or release any past, present, or future support obligation unless the
28 department's child support enforcement division is given written notice under the provisions of 40-5-202.
29 Any modifications or agreements entered into without the participation of the department are void with
30 respect to the state, the department, and the county ~~welfare department~~.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 18. Section 53-3-111, MCA, is amended to read:

"53-3-111. Confidentiality. (1) Except as provided in 53-2-211, personal information provided to or obtained by the ~~county welfare department or the department~~ for the purposes of this chapter is confidential.

(2) Except as provided in 53-2-211 or as authorized by law, disclosure of confidential information concerning applicants for ~~general relief~~ indigent assistance is restricted to purposes directly connected with the administration of programs administered by ~~the department~~ a local office of public assistance except as otherwise provided in this section.

(3) Confidential information may be released upon written consent of the applicant.

(4) Confidential information concerning an applicant may be released without prior consent if an emergency situation necessitates the release. The applicant must be informed of the release as soon as practicable.

(5) Confidential information may be released without notice or consent for the purpose of fraud investigation, collection of child support, the purposes of 53-2-211, and third-party medical recovery.

(6) Confidential information may be released if directed by a court order."

Section 19. Section 53-4-213, MCA, is amended to read:

"53-4-213. Department rules binding ~~on county welfare departments~~. All rules of the department made under this part ~~shall be~~ are binding upon the ~~county departments~~ local offices of public ~~welfare~~ assistance."

Section 20. Section 53-4-214, MCA, is amended to read:

"53-4-214. Distribution of copies of law and forms by department. The department shall have printed and shall distribute copies of this part to all ~~county welfare departments~~ local offices of public assistance and shall prescribe the form of and print and supply to the ~~county welfare department~~ local

1 offices of public assistance blanks of applications, reports, and other forms that may be necessary in
2 relation to the FAIM financial assistance and other programs funded under the temporary assistance for
3 needy families block grant."

4
5 **Section 21.** Section 53-4-233, MCA, is amended to read:

6 **"53-4-233. ~~Investigation of applications~~ Eligibility determination.** Whenever a ~~county department~~
7 local office of public assistance receives an application for assistance under this part, an ~~investigation~~
8 eligibility determination must be promptly made by the ~~county department~~ local office of public ~~welfare~~
9 assistance. Each applicant must be informed of the applicant's right to a fair hearing and of the confidential
10 nature of information secured. Upon completion of an ~~investigation~~ eligibility determination, aid must be
11 furnished promptly to all eligible persons. Each applicant must receive written notice of the decision
12 concerning the applicant's request for assistance."

13
14 **Section 22.** Section 53-4-244, MCA, is amended to read:

15 **"53-4-244. Payments to person interested in child's welfare in lieu of special guardianship.** In lieu
16 of guardianship proceedings, payments may be made in behalf of the child or children to another person
17 found by the ~~county department~~ local office of public assistance to be interested in or concerned with the
18 welfare of the needy child or children in accordance with the rules established by the department of public
19 health and human services."

20
21 **Section 23.** Section 53-6-112, MCA, is amended to read:

22 **"53-6-112. Department to print and distribute copies of part and certain forms.** The department
23 of public health and human services shall have printed and shall distribute copies of this part to all ~~county~~
24 ~~welfare departments~~ local offices of public assistance and shall prescribe the form of and print and supply
25 to the ~~county welfare departments~~ local offices of public assistance blanks of applications, reports, and
26 other forms ~~as that~~ may be necessary in relation to medical assistance."

27
28 **Section 24.** Section 53-6-114, MCA, is amended to read:

29 **"53-6-114. Rules of department binding ~~on county welfare departments~~.** All rules of the
30 department of public health and human services made under this part are binding upon the ~~county~~

1 ~~departments~~ local offices of public welfare assistance."

2

3 **Section 25.** Section 53-6-121, MCA, is amended to read:

4 **"53-6-121. ~~County department charged with local~~ Local administration of medical assistance.** The
5 ~~county department~~ local offices of public welfare ~~shall be~~ assistance are charged with the local
6 administration and supervision of medical assistance, including medicaid, subject to the powers, duties,
7 and functions prescribed for the county department in chapter 2 of this title rules, and overall supervision
8 of the department."

9

10 **Section 26.** Section 53-6-132, MCA, is amended to read:

11 **"53-6-132. Application for assistance -- exception.** (1) Except as provided in subsection (2),
12 application for assistance under this part must be made to the local office of ~~the county department~~ public
13 assistance in the county in which the person is residing. The application must be presented in the manner
14 and on the form prescribed by the department of public health and human services. All individuals wishing
15 to apply must have the opportunity to do so.

16 (2) Notwithstanding the provisions of subsection (1), the department may designate an entity
17 other than the ~~county department~~ local office of public assistance to determine eligibility for medicaid
18 managed care services."

19

20 **Section 27.** Section 53-6-133, MCA, is amended to read:

21 **"53-6-133. ~~Investigation and Eligibility determination of eligibility~~.** (1) The ~~county department~~ local
22 office of public assistance shall promptly ~~investigate and~~ determine the eligibility of each applicant under
23 this part in accordance with the rules of the department of public health and human services. Each
24 applicant must be informed of the right to a fair hearing and of the confidential nature of the information
25 given. The ~~county~~ department, through the local office of public assistance, shall determine whether or
26 not the applicant is eligible for assistance under this part, and aid must be furnished promptly to eligible
27 persons. Each applicant shall receive written notice of the decision concerning the applicant's application,
28 and the right of appeal is secured to the applicant under the procedures of 53-2-606.

29 (2) The ~~county departments~~ local office of public welfare assistance and the department of public
30 health and human services may accept the federal social security administration's determination of

1 eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying the eligible
2 individuals to receive medical assistance under this part."

3

4 **Section 28.** Section 53-6-155, MCA, is amended to read:

5 **"53-6-155. Definitions.** As used in this part, unless expressly provided otherwise, the following
6 definitions apply:

7 (1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving
8 disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the
9 medical assistance program when the disregard or failure results or may result in an incorrect determination
10 that a person is eligible for medical assistance or payment by a medicaid agency of medical assistance
11 payments to which the provider is not entitled.

12 (2) "Applicant" means a person:

13 (a) who has submitted an application for determination of medicaid eligibility to a medicaid agency
14 on the person's own behalf or on behalf of another person; or

15 (b) on whose behalf an application has been submitted.

16 (3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient
17 under the medicaid program.

18 (4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form,
19 that is used to claim specific services or items as payable or reimbursable under the medicaid program or
20 that states income, expense, or other information that is or may be used to determine entitlement to or
21 the rate of payment under the medicaid program. The term includes any documents submitted as part of
22 or in support of the claim.

23 (5) "Department" means the department of public health and human services provided for in
24 2-15-2201.

25 (6) "Document" means any application, claim, form, report, record, writing, or correspondence,
26 whether in written, electronic, magnetic, or other form.

27 (7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving
28 purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid
29 payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not
30 limited to any conduct or omission under the medicaid program that would constitute a criminal offense

1 under Title 45, chapter 6 or 7.

2 (8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter
3 6.

4 (9) "Medicaid agency" means any agency or entity of state, county, or local government that
5 administers any part of the medicaid program, whether under direct statutory authority or under contract
6 with an authorized agency of the state or federal government. The term includes but is not limited to the
7 department, the department of corrections, ~~county~~ local offices of ~~human services and public welfare~~
8 assistance, and other local and state agencies and their agents, contractors, and employees, when acting
9 with respect to medicaid eligibility, claims processing or payment, utilization review, case management,
10 provider certification, investigation, or other administration of the medicaid program.

11 (10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or
12 wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by
13 the patient or the patient's designated representative. Misappropriation of patient property includes but
14 is not limited to any conduct with respect to a patient's property that would constitute a criminal offense
15 under Title 45, chapter 6, part 3.

16 (11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or
17 unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or
18 mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a
19 patient that would constitute a criminal offense under Title 45, chapter 5.

20 (12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission,
21 to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental
22 illness when an omission is not caused by factors beyond the person's control or by good faith errors in
23 judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would
24 constitute a criminal offense under 45-5-208.

25 (13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other
26 entity or business association that has enrolled or applied to enroll as a provider of services or items under
27 the medical assistance program established under this part.

28 (14) "Recipient" means a person:

29 (a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether
30 or not the person actually has received any benefits; or

(b) who actually receives medicaid benefits, whether or not determined eligible.

(15) (a) "Records" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

(i) pertaining to the provision of treatment, care, services, or items to a recipient;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The term includes all records and documents, regardless of whether the records are required by medicaid laws, regulations, rules, or policies to be made and maintained by the provider."

Section 29. Section 53-6-157, MCA, is amended to read:

"53-6-157. Powers and duties of medicaid fraud control unit. (1) The medicaid fraud control unit shall:

(a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants, recipients, providers, or other persons under the medical assistance program established under this chapter, including but not limited to cases referred by the department;

(b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal proceedings or refer the complaint to another state agency for action;

(c) refer to the department for collection and, when appropriate, consideration and imposition of appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments, fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying out its activities;

(d) communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other state and federal agencies involved in the investigation and prosecution of health care fraud, abuse, and other improper activities related to the medicaid program;

(e) transmit to other state and federal agencies, in accordance with law reports of convictions, copies of judgments and sentences imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or assistance programs; and

(f) recommend to state agencies appropriate or necessary adoption or revision of statutes, regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the medicaid program.

(2) The medicaid fraud control unit may:

(a) initiate criminal prosecutions related to the medicaid program in any court of competent jurisdiction in the state of Montana;

(b) upon written request, obtain information and records from applicants, recipients, and providers;

(c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas under Title 46, chapter 4, part 3;

(d) subject to applicable federal confidentiality laws and regulations and for purposes related to any investigation or prosecution related to the medicaid program, obtain from the department, ~~county welfare and human services~~ local offices of public assistance, and other local, county, or state government departments or agencies records and other information, including but not limited to applicant and recipient applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the department of revenue or the state auditor;

(e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;

(f) enter into agreements with the department and other state and federal agencies in furtherance of the unit's mission; and

(g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and any implementing federal regulations and policies that require the state to operate a medicaid fraud control unit."

Section 30. Section 53-21-113, MCA, is amended to read:

"53-21-113. Costs of committing a patient already voluntarily admitted -- transportation costs for voluntary admission. (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced ~~shall~~ must be borne by the county of the patient's residence at the time of admission.

(2) The costs of transportation to a mental health facility under 53-21-111 and 53-21-112 ~~shall~~

1 must be provided by ~~the welfare department of~~ a local office of public assistance located in the county
2 of the patient's residence. However, if protective proceedings under Title 72, chapter 5, have been or are
3 initiated with respect to the person, the ~~welfare department~~ local office of public assistance may seek
4 reimbursement. If no one else is available to transport ~~him~~ the person, the sheriff shall transport the
5 person."

6

7 NEW SECTION. Section 31. Repealer. Sections 53-2-302, 53-2-303, 53-2-306, 53-2-801,
8 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813, 53-4-221, and 53-4-222, MCA, are repealed.

9

10 NEW SECTION. Section 32. Name change -- directions to code commissioner. Wherever a
11 reference to a "county welfare office" appears in legislation enacted by the 2001 legislature, the code
12 commissioner is directed to change it to a reference to a "local office of public assistance".

13

14 NEW SECTION. Section 33. Effective date. [This act] is effective July 1, 2001.

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- END -